

**TOWN OF CUSHING**  
**PLANNING BOARD**  
**Minutes of Meeting**  
**January 4, 2006**

**Board Present:** Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Dan Remian, Mike Roberts, Town Attorney Greg Cunningham and Secretary Pro Tem Crystal Robinson

**Board Absent:** CEO Bickford

**Call to Order:** Chairman Roberts called the meeting to order at 7:00 pm.

**1. Minutes of Previous Meeting:** Mrs. Kalloch questioned the reference to John Wadhams on Page 1 of the 12/7/05 minutes under Item #3. Mr. Mathieson said this name was correct. Mrs. Kalloch then questioned, on Page 3 (next to last paragraph), a reference to the fire pond. Mr. Remian said that was correct, as he remembered it. Mrs. Kalloch then said there were comments in Ms. Robinson's handwritten minutes that were not included in the final minutes. She asked that Ms. Robinson's notes be attached to the typed minutes. Mr. Roberts said the minutes should not be approved if they were incomplete. Mrs. Kalloch said that she thought CEO Bickford had mentioned that amendments could be made to the minutes. Mr. Remian said he felt the minutes as presented were fairly complete and Mr. Ellis said he had seen no glaring omissions.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, to accept the minutes of the 12/7/05 meeting as typed and attach Ms. Robinson's notes as part of the record.  
Carried 5-0-0

**2. Dwayne and Dale Prior subdivision application, Map 1, Lot 103.** Mr. Roberts said he had missed the last meeting and was not sure where the Board was with this application. Mrs. Kalloch said this was the final review. She then reported that the CEO had told her that the MDOT permit for the entrance to the subdivision had been received. Mrs. Kalloch said the width of the road was missing but could be measured from the maps. Mr. Ellis stated that one of the approval conditions was that the road is the correct width and he suggested the width could be noted on the Mylar. Mrs. Kalloch recommended that the fire pond completion be waived until it could be tested in the spring. Mr. Kiskila said he had looked at the fire pond prior to the last PB meeting and it looked good. He said the pipe extending from the ground would be adjusted, but he saw no reason the pond would not pass inspection.

Mr. Ellis said the criteria had not been reviewed. Attorney Cunningham read from the 12/7/05 minutes that Mr. Bickford had recommended postponing the review criteria until tonight. Mr. Ellis said he thought the application was complete. Mr. Prior said the only items missing at the last meeting were the road names and the fact that abutters' notices had not been sent. Mrs. Kalloch said she had since sent abutters' letters; one had been returned for incorrect address and she would resend it.

Mr. Roberts commenced the discussion of the review criteria from Article VII of the Subdivision Regulations of the Town of Cushing:

**7.1 Pollution:** Mr. Cunningham said it was preferable, when making a finding, to cite a basis for it. Mr. Remian said the applicants had addressed each point of Subsection 7.1 in their application. Mr. Cunningham disagreed. Mr. Roberts said the PB knew the site was above sea level and not in the floodplain, though the map was not up-to-date. Mr. Kiskila said the property was not even close to the floodplain. Mr. Ellis said this was confirmed on the original maps. Mr. Roberts said the soils and the Priors' test pits had identified sub-soils. Mr. Ellis asked the effect of the land on the effluence. Mr. Prior said there was a drainage plan on the map, addressing surface water drainage. Mr. Remian pointed out that the application contained a soil classification log.

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on Subsection 7.1.  
Carried 5-0-0

**7.2 Sufficient water:** Mr. Roberts said that a letter from Mark Stern of Hatch Well Drilling stated there was no problem with potable water.

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Kiskila, for a positive finding of fact on Subsection 7.2.  
Carried 5-0-0

**7.3 Municipal water supply:** The PB said this was not applicable to this subdivision.

**7.4 Erosion:** Mr. Roberts said there was a Storm Water Management Plan.

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Roberts, for a positive finding of fact on Subsection 7.4, based on the Storm Water Management Plan.  
Carried 5-0-0

**7.5 Traffic:** Mr. Roberts said there was a letter from the DOT approving access onto Route 97.

**ACTION:** Mr. Roberts made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Subsection 7.5, based on the DOT permit.  
Carried 5-0-0

**7.6 Sewage disposal:** Mr. Roberts stated that soil tests had been done on all lots.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on Subsection 7.6, based on the soil tests.  
Carried 5-0-0

**7.7 Municipal waste disposal:** Mr. Roberts cited a letter from Waldoboro Town Manager Lee Smith, which he asked Mr. Ellis to read aloud.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on Subsection 7.7, based on the correspondence from Waldoboro Town Manager Lee Smith.  
Carried 5-0-0

**7.8 Aesthetic, cultural & natural values:** Mr. Roberts stated that the established deed covenants were designed to maintain appropriate aesthetic values of the area. Mr. Ellis summarized the conclusions presented in a letter from Regional Wildlife Biologist G. K. Kempfer.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on Subsection 7.8, based on the correspondence from Regional Wildlife Biologist Kempfer, who stated that no significant wildlife would be affected.  
Carried 5-0-0

**7.9 Conformity with ordinances and plans:**

**ACTION:** Mr. Roberts made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Subsection 7.9, based on the PB's review last month and the plan submitted.  
Carried 5-0-0

**7.10 Financial/technical capacity:** Mr. Roberts stated that the subdivision road would cost \$35,000 and that sale of the first lot would cover expenses. He said that Corner Post Survey in Waldoboro attested to technical capacity. Mr. Cunningham said this did not provide sufficient information on financial capacity and normally the PB would require a letter from a bank. He added that Corner Post's statement referred only to their survey and not to engineering backup or storm water expertise. Mr. Prior said the fire pond was already dug, connected and paid for. Additionally, there was about 600' of road completed. Mr. Ellis noted that the road would have to be inspected and approved by the CEO anyway. Mr. Roberts stated that, in the past, the PB had required more financial capability information. He asked what the lots would sell for and Mr. Prior said that would be up to their real estate agent.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Kiskila, for a positive finding of fact on Subsection 7.10, based on the amount of road completed, the completed fire pond and the amount of money expected to come from the sale of the lots.  
Carried 5-0-0

**7.11 Surface waters:** Mr. Cunningham said the plan located the wetlands based on a surveyor's determination. He suggested asking the applicants how the location and extent of the wetlands was determined, since there was a fair amount of wetlands in at least three lots. Mr. Prior said that Corner Post Survey was certified to delineate wetlands. John Mathieson attested that the surveyor of record was a wetlands-certified delineator.

**ACTION:** Mr. Roberts made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Subsection 7.11, based on the survey designations on the plan.  
Carried 5-0-0

**7.12 Groundwater:**

**ACTION:** Mr. Roberts made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Subsection 7.12, based on the Storm Water Management Plan.  
Carried 5-0-0

**7.13 Flood areas:** The PB said this was not applicable to this subdivision.

**7.14 Freshwater wetlands:** Mr. Ellis asked if the wetlands identified were those designated by the state. Mr. Cunningham said he felt state-designated wetlands should have been included under Subsection 7.15, not 7.14, and thus were not applicable.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on Subsection 7.14, based on the submitted drawing.  
Carried 5-0-0

**7.15 River/stream/brook:** Mr. Roberts stated that there were no rivers, streams or brooks within or abutting the proposed subdivision.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on Subsection 7.15, based on the plan.  
Carried 5-0-0

**7.16 Storm water:**

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on Subsection 7.16, based on the Storm Water Management Plan.  
Carried 5-0-0

**7.17 Spaghetti lots:** Mr. Roberts said there were no spaghetti lots proposed.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on Subsection 7.17, based on the drawing.  
Carried 5-0-0

**7.18 Phosphorous:** Mr. Roberts said there were no great ponds in the area.

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on Subsection 7.18, based on the fact that there were no great ponds in or abutting the proposed subdivision.  
Carried 5-0-0

Chairman Roberts then directed the discussion to Article VIII General Requirements of the Subdivision Regulations of the Town of Cushing:

**8.1 Conform to Comprehensive Plan:** The PB determined that this was not applicable.

## **8.2 Suitable for Development:**

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on Subsection 8.2 (a)(b)(c).  
Carried 5-0-0

Article IX Design and Performance Standards of the Subdivision Regulations of the Town of Cushing:

**9.1 Lot size/shape:** Chairman Roberts said that each lot was comprised of 40,000 Sq. Ft. of land suitable for development. Attorney Cunningham said that the wetlands on the smallest lot (1.03 acres) were not defined as they were on the other parcels. Mr. Roberts asked Mr. Prior if 1.03 acres was the size of the lot or of the buildable area only. Mr. Prior replied that the 1.03 acres was for the full lot. Mr. Roberts said that was a problem because it needed to be 40,000 Sq. Ft., excluding the wetlands. Mr. Prior said that lot had been sold last March before there was a subdivision. Mr. Roberts said the same problem was evident on Lot #3 and the PB needed to know the Sq. Ft. of buildable area. Mrs. Kalloch said this question had never been addressed with other developers. John Mathieson said that state statute required the area of wetlands be subtracted from the total area within each lot in order to determine if the buildable area met town standards. Mr. Roberts asked the Priors to have their surveyor identify the square footage of the wetlands within each lot.

The PB then discussed the frontage of the lots. Mr. Roberts said that Lot #6 did not have enough and Mr. Ellis said there was an exception for cul-de-sacs. Mr. Cunningham asked if this lot was indeed a cul-de-sac, since it looked like a hammerhead on the plan. Mr. Prior said it was a hammerhead; the utility corridor was drawn as a circle and the roadway was a T. Mr. Cunningham stated that the only frontage exception was for a cul-de-sac. Mr. Prior countered that the intent of the regulations was to allow someone ready access to an area like Lot #6. There was, he said, ample room to put a driveway into this 3-acre lot. Mr. Prior asked if the PB could make an exception. Mr. Roberts replied that the PB had held other developers to the minimum 150' frontage rule. Mr. Prior said the intent of the T was to allow emergency vehicles ample room to turn around. Mr. Roberts asked how difficult it would be to make it a cul-de-sac and Mr. Prior said the drawings would have to be redone. Mr. Prior asked the intention of the 150' frontage rule and Mr. Roberts said he didn't know. Mr. Ellis asked the Fire Chief if he thought having a driveway at the T-turn would nullify the intent of the frontage rule. Mr. Kiskila said he did not, since he had seen T-turns in other subdivisions. Mr. Cunningham, when asked, said he did not know the intent of creating an exclusion for cul-de-sacs, except that a cul-de-sac provided more access points than a hammerhead. He concluded that the Priors should change the T to a cul-de-sac since they could; otherwise, the frontage would be 107'. There was further discussion of the issue, including the location of driveways.

Mr. Cunningham asked if a waiver would nullify intent. Mr. Roberts replied he thought not if the intent was public health and safety. Mr. Cunningham then asked if a waiver would permit more practical development and Mr. Ellis said it would. Mr. Cunningham asked, were a waiver granted, if it would be a special circumstance. Chairman Roberts said he felt a waiver would set a precedent. Mr. Remian remarked that there was room for a cul-de-sac and he thought the applicants should put one in. John Mathieson gave his opinion as to why a surveyor would put a cul-de-sac into a plan. Mr. Cunningham said he thought the Priors, if they wanted a waiver, should provide a letter from their surveyor stating, and supporting with evidence, that a hammerhead was the best option. Chairman Roberts asked the Priors to have their surveyor substantiate the need for a hammerhead. He stressed that cost would not be a factor for the PB's granting of a waiver.

**9.3, 9.4, 9.5:** The PB declared these subsections not applicable to this application.

## **9.6 Surface drainage:**

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on Subsection 9.6, based on the previous finding on surface drainage determination and the Storm Water Management plan.  
Carried 5-0-0

## **9.7 Sewage disposal:**

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Ellis, for a positive finding of fact on Subsection 9.7, based on the previous information and soil tests.  
Carried 5-0-0

## **9.8 Water supply:**

**ACTION:** Mr. Roberts made a motion, seconded by Mr. Remian, for a positive finding of fact on Subsection 9.8, based on testimony of the well drilling company.  
Carried 5-0-0

**9.9 Road standards:** Mr. Roberts said the PB would leave this for the CEO's approval.

**9.10 Cleanup:** Mr. Prior stated that stumps were being removed and burned during the road construction. Mr. Kiskila confirmed this.

**9.11 Completion of roads:** The PB said this had been discussed.

## **9.12 Fire protection:**

Attorney Cunningham said that the fire pond should be discussed. Mr. Ellis said he liked the suggestion to consider delaying approval of the fire pond until it was filled with water. Mr. Roberts asked the Fire Chief if the fire pond size was adequate and Mr. Cunningham asked if the PB had a detailed plan of the fire pond. Mr. Roberts said he felt the details on the plan were adequate. Mr. Prior said he had followed the Fire Chief's recommendations. Mr. Cunningham said the fire pond was located on a private lot rather than on common land, as was typical with joint responsibility. Mr. Prior said the surveyor would be separating the pond out and making it part of the utility corridor. He said they would fix that or provide covenants in the deeds for common maintenance. Mr. Cunningham suggested the PB review the deed for appropriate language.

Since the majority of the standards had been approved, Mr. Cunningham suggested the PB outline for the applicants what was needed for the next meeting. Mr. Roberts specified the following items:

- 1) A clarification, on the east end of the road, of whether a hammerhead or cul-de-sac was the most practical solution, including a personal appearance of, or letter from, the surveyor.
- 2) A straight-line measurement should be provided for the road frontage of Lots #1 & #2.
- 3) Provide square footage of wetlands for Lots #3, #4 & #5. Both upland and wetland calculations should be provided for all lots.
- 4) Show the 50' width designation for Chickadee Drive.
- 5) Fire pond should be clearly designated as a separate lot with common access.

David Glidden asked if access to the fire pond would be via an easement by deed and Mr. Roberts explained that it would be part of the utility corridor. Mr. Glidden suggested the PB should continue to clarify the fire pond access on all subdivisions. There was a brief discussion. Mr. Cunningham said it was imperative that the necessary bundle of rights concerning fire ponds was given to the town or to a road association at the outset.

**3. John Mathieson, Surveyor, subdivision review, land of Elisabeth Ogilvie, Map 7, Lot 85, Gay Island.** Mr. Mathieson provided out to members and displayed on the wall a plan of Doug Meservy's soil test sites. He said that CEO Bickford had reviewed this and made some cosmetic changes. Mr. Roberts asked if this were still pre-application review and Mr. Ellis said it was up for review, but the Board should check for completeness, as items had been missing at the last meeting. Mr. Mathieson said he had spoken with the CEO, who had discussed changes that would make the plan clearer for the Board.

The Board then began to compare the old and new plans. Mr. Ellis mentioned that the 75' setback was still not complete but Mr. Mathieson said he had shown that the farmhouse was well beyond the setback. He stated that Mrs. Ogilvie's office was within the setback, but was grandfathered. Mr. Ellis pointed out that the covenants allowed for two more buildings to be placed on the property. He said that, when permits were sought for these buildings, it would be easier if the 75' setback were depicted throughout the plan. Mr. Mathieson said he could be contacted when that occurred and he could easily show where the new buildings would be in relation to the setback, as it was all done in GIS. Mr. Cunningham asked if all the land shown in gray was covered by the conservation easement. Mr. Mathieson said it was and read aloud some of its provisions, including the fact that there would be 100' setbacks.

Mr. Ellis asked about the test pits. Mr. Mathieson said there were two existing privies that could not be expanded and a soil analysis had been done based on no expansion. Mr. Ellis clarified that the tests had passed the state

septic requirements. Since there were no residences on the property, Mr. Mathieson said, there was no need for a septic plan. Mr. Ellis said the covenants allowed for two more buildings anywhere on the lots and asked if additional privies would also be allowed. Mr. Ellis asked Mr. Cunningham to confirm that approval had to include a provision that every lot passed the state's septic requirements, unless a covenant specified only gray water. Mr. Cunningham replied that the subdivision standards required the PB to determine that there was adequate septic disposal on the site, typically with an HH200 form. The HH200 on the Morris lot assumed a 1-bedroom house with an outhouse. Mr. Cunningham said the covenants were substantial and, without a thorough reading, he could not easily see how they applied to each lot. Mr. Mathieson stated that the covenants covered the entire subdivision, with the exception of land being conveyed to abutters, but went only as far as state statutes for the existing privy and gray water. Mr. Ellis noted that this was less than the normal standard, so he felt it should be part of the covenant. Mr. Remian said the soil tests allowed only a 1-bedroom with a privy and that was all that would be permitted. Mr. Cunningham agreed, but said this was an unusual subdivision as it contained no roads and no fire pond. He said the subdivision should not be filed without reference to the conservation easements, to insure that it could not be developed. He said the covenants should be referenced on the plan, including a condition that said development had to be consistent with the conditions and that the covenants could not be modified without Board approval. Mr. Mathieson pointed out that the deeds referred to the restrictive covenants, so anyone buying the property would know it was covered by the conservation easement. Mr. Cunningham disagreed, saying the covenants could possibly be lifted by private owners and, without reference to them on the plan; the Board could not control this. Mr. Mathieson disagreed, but Chairman Roberts said the covenants should be on the plan as well as on the deeds. Mr. Cunningham said the Board needed the applicant to direct them to the provision that placed the restriction on the property, justifying approval of a lot with only an approved septic, a 1-bedroom house and no road. A prospective buyer could attempt to lift the restrictions in order to develop the lot, he said, if they were not noted on the subdivision plan. Mr. Mathieson continued to argue that the deeds were well documented. Mr. Roberts ended the discussion by reiterating that the PB would require that the covenants be on the plan.

Mr. Ellis said that Lot #85-4 was not noted on the plan. He also noted that the Shoreland Zone ordinance referenced a Resource Protection district, listing Tax Map 7, Lot 85 as being in a flood zone. He asked the applicant to show this on the plan. Mr. Ellis then pointed out that a beach area was included in the subdivision, yet was depicted as outside the boundary of it. Mr. Mathieson said he had shown the high water line, to which the acreage was calculated, and said he would create a new deed description conveying rights into the tidal area.

Chairman Roberts referred to a list of questions prepared by CEO Bickford. First, the Shoreland Zone 250' setbacks were not parallel to the water. Mr. Mathieson said this had been corrected and pointed it out on the plan. In response, Mr. Roberts pointed out lines that needed to be more consistent and inclusive, including a more accurate tide line. There followed a lengthy discussion as to specific line placements. Mr. Roberts noted that several items had been corrected. Mr. Ellis said the plan should show four lots. The abutters had not been notified, but a list had been included in the packet and Mr. Roberts said he would send the notices. They reviewed the list of abutters.

Mr. Ellis suggested reviewing the plan requirements. It was determined that all requirements were met, with the exception of 1) the flood zone being depicted, 2) Mr. Mathieson needed to provide an accurate list of the names and addresses of the nine abutters, 3) the rest of the 250' Shoreland zone should be shown, as discussed and 4) easements. Mr. Roberts asked Mr. Cunningham for his recommendation for language concerning the fire pond waiver that had been granted. There was discussion regarding fighting fires on islands. Mr. Cunningham said this raised the question of whether the town should be permitting subdivisions on islands that had no fire-fighting capability. He said he did not see a provision in the ordinance for the waiver of a fire pond. Regardless, Mr. Cunningham said the fact of the waiver could be documented within the notes. Any future waivers, he said, should be conditioned upon a limited number of lots. Mr. Roberts asked Mr. Mathieson to include in the plan notes that a fire pond waiver had been granted on 11/2/05.

**4. Last Resort Holdings, LLC, application for amendment to Meduncook Plantation subdivision, presented by James Tower.** Mr. Tower said that, due to the late hour, he would be agreeable to postponing his proposal for two weeks. The PB agreed to meet at 6:00 pm on January 18 to consider the amendment.

**5. Old Business:** None

**6. New Business:** Mr. Ellis said he had received a letter from Mr. Cunningham in response to his question about the flood plain ordinance that was voted in at Town Meeting without a Public Hearing, thus rendering it unenforceable. Mr. Cunningham had said it would need to go through the proscribed procedure, including a Public Hearing and another vote. Mr. Ellis proposed the PB discuss it and give the Selectmen a recommendation. Mr. Ellis

thought it should be dropped, but Mr. Kiskila disagreed. Mr. Ellis said the person who had asked for it now wished she had not, because of what it entailed. Mr. Ellis mentioned some of the inherent problems and suggested the PB discuss it at the next meeting.

Mr. Cunningham said Mr. Tower had provided a letter from his attorney regarding the restrictive covenants not being amended without the consent of all lot owners. From this letter, Mr. Cunningham received the impression that the Board might not have the most current version of the covenants. Mr. Tower said this was possible and he would provide a recorded copy prior to the next meeting.

Mr. Remian said some of Mr. Tower's plans referred to "retained" and "common" land and these seemed to be interchangeable on the drawings; he asked for definitions. Mr. Tower said common land would be owned in common by the association and retained land was land that was not part of the subdivision. He said references had been evolutionary but would be clearly defined.

Mr. Mathieson asked if the flood maps had been accepted. Mr. Roberts said he had provided the Selectmen with the cost of upgraded maps and was unsure what would be done. David Glidden said they had decided to have the floodplain map done. Mike said he would discuss it with Eric. Mr. Mathieson asked if there was floodplain information for his plan and Mr. Roberts said there was.

**7. Adjournment:** Mr. Roberts made a motion, seconded by Mr. Remian, to adjourn at 10:00 pm.  
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey  
(Transcribed from the notes of Crystal Robinson and the audio recording)